

1 Gary M. Anderson (State Bar No. 97385)
Michael J. Moffatt (State Bar No. 180343)
2 Jessica Brookhart-Knost (State Bar No. 246244)
FULWIDER PATTON LLP
3 Howard Hughes Center
6060 Center Drive, Tenth Floor
4 Los Angeles, California 90045
Telephone: (310) 824-5555
5 Facsimile: (310) 824-9696
lidocketla@fulpat.com

6 Attorneys for Plaintiff

7
8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 D&D GROUP PTY LTD, an Australian
12 corporation, D & D TECHNOLOGIES
PTY LTD, an Australian corporation
13 and D & D TECHNOLOGIES (USA),
INC. a California corporation,

14 Plaintiff,

15 v.

16 Nationwide Industries, Inc., a Florida
17 corporation,

18 Defendant.

19 And Related Counterclaims

CASE NO. 08CV-0236 WQH POR

Assigned to The Hon. William Q.
Hayes

Complaint Filed: February 6, 2008

Plaintiff and Counterdefendant D&D
Technologies Pty Ltd's Reply to
Defendant's Counterclaims and Jury
Demand

20
21 Plaintiff and Counterdefendant D&D Technologies Pty Ltd (hereinafter
22 "D&D Technologies" or "Counterdefendant"), by and through its undersigned
23 counsel, as and for its Reply in response to the Counterclaims asserted against it by
24 Defendant and Counterclaimant Nationwide Industries, Inc. (hereinafter
25 "Nationwide" or "Counterclaimant") in the above-captioned action, responds as
26 follows:

27 **I. COUNTERCLAIMS**

28 1. Upon information and belief, D&D Technologies admits the allegations

1 contained in Paragraph 26 of the Counterclaims.

2 2. D&D Technologies admits the allegations contained in Paragraphs 27-
3 30 of the Counterclaims.

4 **FIRST COUNTERCLAIM: DECLARATORY JUDGMENT OF**
5 **PATENT INVALIDITY AND NON-INFRINGEMENT**
6

7 3. In response to Paragraph 31 of the Counterclaims, D&D Technologies
8 repeats and realleges each and every averment contained in its Complaint and
9 repeats and realleges each an every response as set forth in Paragraphs 1 through 2
10 of D&D Technologies' Reply to the Counterclaims as set forth herein.

11 4. In response to Paragraph 32 of the Counterclaims, D&D Technologies
12 admits that Nationwide claims it has stated a claim for Declaratory Judgment that
13 arises under the Patent Laws of the United States. D&D Technologies denies each
14 and every remaining allegation as set forth in Paragraph 32 of Defendant's
15 Counterclaims.

16 5. D&D Technologies admits the allegations contained in Paragraphs 33-
17 35 of the Counterclaims.

18 6. In response to Paragraph 36 of the Counterclaims, D&D Technologies
19 admits the allegations contained in Paragraph 36 of the Counterclaims.

20 7. D&D Technologies denies each and every allegation set forth in
21 Paragraphs 37 and 38 of the Counterclaims.

22 **SECOND COUNTERCLAIM: UNFAIR COMPETITION AND**
23 **FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)(1)(B)**
24

25 8. In response to Paragraph 39 of the Counterclaims, D&D Technologies
26 repeats and realleges each and every averment contained in its Complaint and
27 repeats and realleges each an every response as set forth in Paragraphs 1 through 7
28 of D&D Technologies' Reply to the Counterclaims as set forth herein.

1 9. In response to Paragraph 40 of the Counterclaims, Plaintiff D&D
2 Technologies admits that Nationwide claims to have stated a claim for unfair
3 competition and false advertising, which arise under the Lanham Act, 15 U.S.C. §§
4 1051 *et seq.* D&D Technologies denies each and every remaining allegation as set
5 forth in Paragraph 40 of the Counterclaims.

6 10. D&D Technologies admits the allegations contained in Paragraphs 41-
7 42 of the Counterclaims.

8 11. In response to Paragraph 43 of the Counterclaims, D&D Technologies
9 admits that Nationwide has attached Exhibits 1, 2, 3, 4, and 5 to the Counterclaims,
10 which purport to be advertising and promotional materials. D&D Technologies
11 denies each and every remaining allegation of Paragraph 43 of the Counterclaims.

12 12. D&D Technologies denies each and every allegation set forth in
13 Paragraphs 44 and 45 of the Counterclaims.

14 13. In response to Paragraph 46 of the Counterclaims, D&D Technologies
15 denies that the Advertising Materials attached to Counterclaimant Nationwide's
16 Counterclaim were created or disseminated by D&D Technologies and, further
17 denies each and every remaining allegation in said Paragraph.

18 14. D&D Technologies denies each and every allegation set forth in
19 Paragraphs 47, 48, 49 and 50 of the Counterclaims.

20 **THIRD COUNTERCLAIM:**

21 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**

22 15. In response to Paragraph 51 of the Counterclaims, D&D Technologies
23 repeats and realleges each and every averment contained in its Complaint and
24 repeats and realleges each and every response as set forth in Paragraphs 1 through
25 14 of D&D Technologies' Reply to the Counterclaims as set forth herein.

26 16. In response to Paragraph 52 of the Counterclaims, D&D Technologies
27 admits that Nationwide claims to have stated a claim for unfair competition under
28 the California Business and Professions Code § 17200. D&D Technologies denies

1 each and every remaining allegation set forth in Paragraph 52 of the Counterclaims.

2 17. D&D Technologies admits the allegations contained in Paragraphs 53-
3 54 of the Counterclaims.

4 18. In response to Paragraphs 55-56 of the Counterclaims, D&D
5 Technologies denies that the Advertising Materials attached to Counterclaimant
6 Nationwide's Counterclaim were created or disseminated by D&D Technologies
7 and, further denies each and every remaining allegation made against Plaintiff D&D
8 Technologies in Paragraphs 55-56.

9 **FOURTH COUNTERCLAIM:**

10 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.**

11 19. In response to Paragraph 57 of the Counterclaims, D&D Technologies
12 repeats and realleges each and every averment contained in its Complaint and
13 repeats and realleges each an every response as set forth in Paragraphs 1 through 18
14 of D&D Technologies' Reply to the Counterclaims as set forth herein.

15 20. In response to Paragraph 58 of Defendant's Counterclaims, D&D
16 Technologies admits that Nationwide claims it has stated a claim for false
17 advertising under the California Business and Professions Code § 17500 and
18 17508(a). D&D Technologies denies each and every remaining allegation as set
19 forth in Paragraph 58 of Nationwide's Counterclaims.

20 21. D&D Technologies admits the allegations contained in Paragraphs 59-
21 60 of the Counterclaims.

22 22. In response to Paragraph 61 of the Counterclaims, D&D Technologies
23 denies that the Advertising Materials attached to Counterclaimant Nationwide's
24 Counterclaim were created or disseminated by Plaintiff D&D Technologies and,
25 further denies each and every remaining allegation made against Plaintiff D&D
26 Technologies in Paragraph 61.

27 **FIFTH COUNTERCLAIM: TRADE LIBEL**

28 23. In response to Paragraph 62 of the Counterclaims, D&D Technologies

1 repeats and realleges each and every averment contained in its Complaint and
2 repeats and realleges each and every response as set forth in Paragraphs 1 through 22
3 of D&D Technologies' Reply to the Counterclaims as set forth herein.

4 24. In response to Paragraph 63 of the Counterclaims, D&D Technologies
5 admits that Nationwide claims it has stated a claim for the common law tort of trade
6 libel. D&D Technologies denies each and every remaining allegation as set forth in
7 Paragraph 63 of the Counterclaims.

8 25. D&D Technologies admits the allegations contained in Paragraphs 64-
9 65 of the Counterclaims.

10 26. In response to Paragraphs 66-68 of the Counterclaims, D&D
11 Technologies denies that the Advertising Materials attached to Counterclaimant
12 Nationwide's Counterclaim were created or disseminated by Plaintiff D&D
13 Technologies and, further denies each and every remaining allegation made against
14 D&D Technologies in Paragraphs 66-68.

15 27. To the extent that an allegation or legal conclusion in Defendant's
16 Counterclaims was not specifically admitted or denied, D&D Technologies hereby
17 denies such allegations and legal conclusions.

18 **II. AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 28. Nationwide Counterclaims fail to state any claims against D&D
21 Technologies on which relief may be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 29. The '100 patent is not invalid or unenforceable under any of the U.S.
24 Patent laws.

25 **THIRD AFFIRMATIVE DEFENSE**

26 30. Defendant's Second, Third, Fourth, and Fifth Counterclaims fail
27 because D&D Technologies never created or disseminated the advertisements
28 attached to Nationwide's Counterclaim, and because said advertisements are

1 truthful.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 31. Defendant's Second, Third, Fourth, and Fifth Counterclaims fail
4 because D&D Technologies never created or disseminated the advertisements
5 attached to Nationwide's Counterclaim, and because said advertisements contain
6 lawful puffery.

7
8 **III PRAYER FOR RELIEF**

9 WHEREFORE, given the aforementioned response to Nationwide's
10 Counterclaims, D&D Technologies respectfully requests that this Court grant D&D
11 Technologies the following relief:

- 12 A. That Nationwide's Counterclaims be dismissed with prejudice;
- 13 B. That judgment be entered against Nationwide on all claims and
- 14 causes of action at issue in the Nationwide's Counterclaims;
- 15 C. That Nationwide be denied its Prayer for dismissal of Plaintiff's
- 16 Complaint;
- 17 D. That Plaintiff's U.S. Patent No. 5,584,100 be found valid and
- 18 enforceable;
- 19 E. That Nationwide be found to have infringed U.S. Patent No.
- 20 5,584,100;
- 21 F. That this case be found not to be exceptional with respect to
- 22 Nationwide's Counterclaims and Prayer for Relief;
- 23 G. That Nationwide be denied all injunctive and monetary relief,
- 24 including its requests for attorneys' fees, expenses and costs, by
- 25 way of its Prayers for Relief in the Counterclaims;
- 26 H. That D&D Technologies be awarded damages pursuant to 35
- 27 U.S.C. §284;
- 28 I. That Nationwide be preliminarily and permanently enjoined

1 from infringing U.S. Patent No. 5,584,100;

2 J. That D&D Technologies be awarded its attorneys' fees pursuant
3 to 35 U.S.C. §285, along with an award of costs incurred by
4 D&D Group in defense of the Counterclaims;

5 K. That Nationwide take nothing by way of its Prayers for Relief;
6 and

7 L. That the Court award any other relief to which D&D
8 Technologies may be entitled.

9 Respectfully submitted,

10 FULWIDER PATTON, LLP

11
12 Dated: May 19, 2008

By: /s/Gary M. Anderson

Gary M. Anderson

Michael J. Moffatt

Jessica Brookhart-Knost

Attorneys for Plaintiffs

D&D GROUP PTY LTD, D&D

TECHNOLOGIES PTY LTD. and

D&D TECHNOLOGIES (USA), INC.

JURY DEMAND

D&D Technologies hereby requests a trial by jury on all issues so triable raised by Nationwide's Counterclaims in this action.

Respectfully submitted,

FULWIDER PATTON, LLP

Dated: May 19, 2008

By: /s/Gary M. Anderson

Gary M. Anderson

Michael J. Moffatt

Jessica Brookhart-Knost

Attorneys for Plaintiffs

D&D GROUP PTY LTD, D&D

TECHNOLOGIES PTY LTD. and

D&D TECHNOLOGIES (USA), INC.


56687.1

CERTIFICATE OF SERVICE

I certify that on **May 19, 2008**, the foregoing **PLAINTIFF AND COUNTERDEFENDANT D&D TECHNOLOGIES PTY LTD'S REPLY TO DEFENDANT'S COUNTERCLAIMS AND JURY DEMAND** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participant(s) e-mail address(es) denoted on the attached Electronic Mail Notice List. For Parties who are not Filing Users, I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participant(s), if any, indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **May 19, 2008**.


Carrie Rose

Mailing Information for a Case 3:08-cv-00236-WQH-POR

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Gary M Anderson**
ganderson@fulpat.com,LitDocketLA@fulpat.com
- **George R. McGuire**
gm McGuire@bsk.com,jcalaprico@bsk.com
- **James Sullivan McNeill**
jmcneill@mckennalong.com,lvaldez@mckennalong.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

David L. Nocilly
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202-1355